



22 CFR Part 22

[Public Notice: 11995]

RIN 1400-AF61

Schedule of Fees for Consular Services – Administrative Processing of Request for Certificate of Loss of Nationality (CLN) Fee

AGENCY: Department of State.

ACTION: Proposed Rule.

SUMMARY: The Department of State (“Department”) is proposing to amend the Schedule of Fees for Consular Services (“Schedule”) to reduce the current fee for Administrative Processing of a Request for a Certificate of Loss of Nationality of the United States (CLN) from \$2,350 to \$450.

DATES: The Department of State will accept comments until [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Interested parties may submit comments to the Department by any of the following methods:

*Visit the Regulations.gov website at: <https://www.regulations.gov> and search for the Regulatory Information Number (RIN) 1400-AF61 or docket number DOS-2023-0026.

* Email: fees@state.gov. You must include the RIN (1400-AF61) in the subject line of your message.

All comments should include the commenter’s name, the organization the commenter represents (if applicable), and the commenter's address. If the Department is unable to read your comment for any reason, and cannot contact you for clarification, the Department may not be able to consider your comment. After the conclusion of the comment period, the Department will publish a final rule that will address relevant comments as expeditiously as possible.

FOR FURTHER INFORMATION CONTACT: Johanna Cruz, Management Analyst, Office of the Comptroller, Bureau of Consular Affairs, Department of State; phone: 202-485-8915, email: fees@state.gov.

SUPPLEMENTARY INFORMATION:

Background

The proposed rule makes changes to the Department of State's Schedule of Fees for Consular Services by reducing the fee for Item #8, Administrative Processing of Request for Certificate of Loss of Nationality of the United States (CLN), from \$2,350 to \$450. The fee for administrative processing of a CLN (referred to as the "fee for CLN services" throughout this rulemaking) applies to U.S. nationals (*i.e.*, U.S. citizens and non-citizen nationals) who request a CLN under 8 U.S.C. 1481(a)(5) (taking the oath of renunciation before a U.S. diplomatic or consular officer abroad) as well as those who request a CLN under 8 U.S.C. 1481(a)(1) to 1481(a)(4) or other applicable law administered by the Department of State. The fee for CLN services is remitted entirely to the Department of Treasury; revenue collected from the fee for CLN services is not factored into the Bureau of Consular Affairs' (CA) budget.

What Is the Authority for This Action?

The Department of State derives the authority to set fees based on the cost of the consular services it provides, and to charge those fees from the general user charges statute, 31 U.S.C. 9701. *See, e.g.*, 31 U.S.C. 9701(b)(2)(A) ("The head of each agency . . . may prescribe regulations establishing the charge for a service or thing of value provided by the agency . . . based on . . . the costs to the government."). The President also has the power to set the amount of fees to be charged for consular services provided at U.S. embassies and consulates abroad pursuant to 22 U.S.C. 4219, and has delegated this authority to the Secretary of State, E.O. 10718 (June 27, 1957). In the absence of a specific statutory fee retention authority, fees collected for consular services must be deposited into the general fund of the Treasury pursuant

to 31 U.S.C. 3302(b).

Activity-Based Costing

OMB Circular A-25 states that it is the objective of the United States Government to “(a) ensure that each service, sale, or use of Government goods or resources provided by an agency to specific recipients be self-sustaining; [and] (b) promote efficient allocation of the Nation's resources by establishing charges for special benefits provided to the recipient that are at least as great as costs to the Government of providing the special benefits . . .” OMB Circular A-25, 5(a)-(b); *see also* 31 U.S.C. 9701(b)(2)(A) (agency “may prescribe regulations establishing the charge for a service or thing of value provided by the agency . . . based on . . . the costs to the Government . . .”). To set fees that are “self-sustaining,” the Department must determine the full cost of providing each consular service. Following guidance provided in “Managerial Cost Accounting Concepts and Standards for the Federal Government,” OMB's Statement #4 of Federal Accounting Standards (SFFAS #4), *available at* <http://www.fasab.gov/pdffiles/sffas-4.pdf>, the Department chose to develop and use an activity-based costing (ABC) model to determine the full cost of all the services listed in its Schedule of Fees, including those whose fee the Department proposes to change. The Department refers to the specific ABC model that underpins the proposed fees as the “Cost of Service Model” or “CoSM.”

The Government Accountability Office (GAO) defines ABC as a “set of accounting methods used to identify and describe costs and required resources for activities within processes.”

Organizations can use the same staff and resources (computer equipment, production facilities, etc.) to produce multiple products or services; therefore, ABC models seek to identify and assign costs to processes and activities and then to individual products and services through the identification of key cost drivers referred to as “resource drivers” and “activity drivers.” The goal is to proportionally and accurately distribute costs. ABC models require financial and accounting analysis and modeling skills combined with a detailed understanding of an

organization's business processes. SFFAS Statement #4 provides a detailed discussion of the use of cost accounting by the U.S. Government.

The ABC approach focuses on the activities required to produce a particular service or product and uses resource drivers to assign costs through activities and activity drivers to assign costs from activities to services. In the context of the work of the Department's Bureau of Consular Affairs (CA), resource drivers assign costs (resources including materials, supplies, and labor utilized in the production or delivery of services and products) to activities using business rules that reflect the operational reality of CA and the data available from consular systems, surveys, and internal records. Most resource drivers are based on time spent on each activity. Activity drivers assign the cost of consular activities to the services CA provides. Most activity drivers are based on volumes.

Why Is the Department Adjusting this Fee?

Processing a U.S. citizen's request for a CLN based on the performance of a potentially expatriating act provided by statute has always been extremely costly for the Department, requiring consular officers and employees overseas, as well as Bureau of Consular Affairs employees domestically, to spend substantial time accepting, processing, and adjudicating these requests. *See* 75 FR 6324; 79 FR 51250-51. This service is necessarily time consuming because of constitutional and other safeguards imposed by U.S. law to ensure the would-be renunciant is a U.S. national who fully understands the serious consequences of renunciation and that the renunciation is both voluntary and intentional. 80 FR 51466.

A fee for processing a request for a CLN under INA 349(a)(5) (taking the oath of renunciation before a U.S. diplomatic or consular officer abroad) was first implemented in 2010. The fee was set at \$450, which at that time represented less than 25% of the cost to the U.S. Government. 75 FR 36529. The Department set the fee below cost "in order to lessen the impact on those who need this service and not discourage the utilization of the service." 75 FR 36529. That decision was consistent with the approach taken with respect to certain other fees the Department has

discretion to set below cost, including those provided to U.S. citizens in connection with applications for a Consular Report of Birth Abroad, emergency services, documentary services, and death and estate services. The Department's estimate of the level at which U.S. citizens will not be deterred from taking advantage of the service was based on its extensive consultations with experienced consular officers and senior Department managers. 75 FR 36527.

Subsequently, the number of requests for a CLN increased dramatically. During the period the \$450 fee was in place, the demand for CLNs jumped from 956 in 2010 to 3,436 in 2014, an approximately 360-fold increase. The dramatic increase in demand meant that far more consular officer time and resources were consumed providing CLN services. As a result, the Department made the decision to set the fee at cost. In 2014, the Department issued an interim final rule raising the fee from \$450 to \$2,350, as determined by the results of the 2010-2014 Cost of Service Model (CoSM), which incorporated improvements that better captured the actual costs to the U.S. Government of providing consular services overseas. 79 FR 51251. The rule was finalized in 2015. 80 FR 51465.

At the time the fee was increased, the Department received approximately two dozen comments suggesting that the new fee was too costly and that it therefore acted as a deterrent to renunciation. *See* 80 FR 51465. The Department took those concerns into account in setting the fee, but ultimately determined that the significant additional burden on consular operations justified setting the fee at cost, in accordance with general fee-setting principles in 31 U.S.C. 9701 and OMB Circular A-25. *Id.*

In the years since the fee was increased, members of the public have continued to raise concerns about the cost of the fee and the impact of the fee on their ability to renounce their citizenship. While there is no legal requirement for individuals to declare their motivation for renouncing U.S. citizenship, anecdotal evidence suggests that difficulties due at least in part to stricter financial reporting requirements imposed by the Foreign Account Tax Compliance Act

(FATCA), Pub. L. 111-147, on foreign financial institutions with whom U.S. nationals have an account or accounts may well be a factor.

After significant deliberation, taking into account both the affected public's concerns regarding the cost of the fee and the not insignificant anecdotal evidence regarding the difficulties many U.S. nationals residing abroad are encountering at least in part because of FATCA, the Department has made a policy decision to help alleviate at least the cost burden for those individuals who decide for whatever reason to request CLN services by returning to the below-cost fee of \$450. Although the prior fee of \$450 represents a fraction of the cost of providing CLN services, this change will better align the fee for CLN services with other fees for services provided to U.S. citizens abroad, including, for example, applications for a Consular Report of Birth Abroad, which all are set significantly below cost, even as the costs of providing these services have fluctuated over time.

The Department reviews its Cost of Service Model annually, to calculate the cost of providing all services, including CLN services, applying its standard ABC methodology. If, in the future, the results of the CoSM indicate that the Department ought to reevaluate its approach to the fee for CLN services and/or other services provided to U.S. citizens that are set below cost, the Department will engage its experienced consular officers and senior Department managers to help determine the appropriate level at which to set the fee, balancing the need for the U.S. Government to recoup its costs with the need to charge a fee for these services that does not deter individuals from seeking them.

This proposed fee change applies to all services included under "Administrative Processing of Request for Certificate of Loss of Nationality" on the Department's Schedule of Fees for Consular Services. 22 C.F.R. 22.1 Item 8. That item lists services to U.S. nationals (i.e., U.S. citizens and non-citizen nationals) who request a CLN under 8 U.S.C. 1481(a)(5) as well as services to U.S. nationals who request a CLN under 8 U.S.C. 1481(a)(1)-(4) or other applicable law. The fee for processing a request for a CLN under 8 U.S.C. 1481(a)(1)-(4) was also set at

\$2,350 in 2018 as a matter of “fee parity” after the 2010-2014 CoSM indicated that documenting a U.S. national’s relinquishment of nationality is extremely costly regardless of the subsection under which the request for a CLN is made. 80 FR 53707. Although the fee for processing a request for a CLN under 8 U.S.C. 1481(a)(1)-(4) was never set at \$450, the same considerations apply and warrant a consistent approach in setting the fee below cost .

Regulatory Findings

Administrative Procedure Act

The Department is publishing this rulemaking as a proposed rule, with a 30-day provision for public comments. The Department believes that a 30-day comment period provides the public sufficient opportunity to meaningfully review the proposed rule and generate informed comments on its text. The proposed rule involves only one fee, and is not lengthy, technical, and/or complex. Moreover, the Department is engaging in this rulemaking in response to public concerns that already have been raised. A 30-day comment period will enable the Department to complete rulemaking expeditiously, which will facilitate implementation of a change that will benefit applicants seeking CLN services.

Regulatory Flexibility Act

The Department has reviewed this proposed rule and, by approving it, certifies that it will not have a significant economic impact on a substantial number of small entities as defined in 5 U.S.C. 601(6).

Unfunded Mandates Act of 1995

This rulemaking will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501–1504.

Executive Orders 12866, 13563, and 14094

The Department has reviewed this proposed rule to ensure its consistency with the regulatory philosophy and principles set forth in Executive Order 12866, as amended by Executive Order 14094, and Executive Order 13563, and affirms that this regulation is consistent with the guidance therein. The Office of Management and Budget has designated this rulemaking as significant under E.O. 12866.

Details of the changes to the Schedule of Fee are as follows:

Table 1: Changes to the Schedule of Fees

Item No.	Proposed Fee	Current Fee	Change in Fee	Percentage Decrease	Projected Annual Number of Applications \1\	Estimated Change in Annual Fees Collected \2\	Change in State Retained Fees	Change in Remittance to Treasury
SCHEDULE OF FEES FOR CONSULAR SERVICES								
* * * * *								
PASSPORT AND CITIZENSHIP SERVICES								
8. Administrative Processing of Request for Certificate of Loss of Nationality	\$450	\$2,350	(\$1,900)	(80%)	4661	(\$8,855,900)	\$0	(\$8,855,900)

\1\ Based on estimated FY 2022 workload calculated with FY2021 actual demand.

\2\ Using FY 2021 workload to generate collections. This will be a reduction in total annual remittance to Treasury.

Executive Orders 12372 and 13132

This rulemaking will not have substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this proposed rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact

statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this regulation.

Executive Order 13175

The Department has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian Tribal Governments, and will not preempt tribal law. Accordingly, the requirements of Executive Order 13175 do not apply to this rulemaking.

Paperwork Reduction Act

This rulemaking does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 22 CFR Part 22

Consular services, Fees.

Accordingly, for the reasons stated in the preamble, 22 CFR part 22 is proposed to be amended as follows:

PART 22 - SCHEDULE OF FEES FOR CONSULAR SERVICES—DEPARTMENT OF STATE AND FOREIGN SERVICE

1. The authority citation for part 22 continues to read as follows:

Authority: 8 U.S.C. 1101 note, 1153 note, 1157 note, 1183a note, 1184(c)(12), 1201(c), 1351, 1351 note, 1713, 1714, 1714 note; 10 U.S.C. 2602(c); 22 U.S.C. 214, 214 note, 1475e, 2504(h), 2651a, 4206, 4215, 4219, 6551; 31 U.S.C. 9701; E.O. 10718, 22 FR 4632, 3 CFR, 1954–1958 Comp., p. 382; E.O. 11295, 31 FR 10603, 3 CFR, 1966–1970 Comp., p. 570.

2. In § 22.1, amend the table by revising Item 8 to read as follows:

§ 22.1 Schedule of Fees

The following table sets forth the fees for the following categories listed on the U.S. Department of State's Schedule of Fees for Consular Services:

Schedule of Fees for Consular Services

Item No.		Fee
Passport and Citizenship Services		
* * * * *		
8. Administrative Processing of Request for Certificate of Loss of Nationality		\$450
* * * * *		

Hugo Rodriguez,

Acting Assistant Secretary for Consular Affairs,

Department of State.

Billing Code 4710-06

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